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**A Model Law on Legal Ethics and Professional Responsibility for Countries of the Middle East and North Africa (MENA)**

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Our issue this morning is a model law on legal ethics for countries of the Middle East and to what extent

- This law would rely on principles of Islamic law
- And whether such law can rely on rules of business ethics

With me to address these two important issues is Professor Hussein Mirmohammadsadeghi, professor of law at Shahid Beheshti University in Tehran.

Professor Azirei Herbi made the case, I believe, that religion can be a source for ethics.

This can be problematic when you have different interpretations of religious text, for example the definition of family.

The Arab Charter on Human Rights is clear in defining family as an institution between a man and a woman, rejecting same-sex marriage but, of course, not polygamous marriage.

And then there is the other question from a professor at the University of Miami law school: how does the religion of your client affect your presentation?

According to the executive regulation of the Saudi Lawyering law no. 38/7/28/1422, a person is qualified to be a lawyer if he obtains a degree from a Sharia college or any Saudi university offering a law degree. However, experience in the field of lawyering is sufficient. Such experience may be acquired through three years of practice in issuing fatwas, or teaching fiqh or law in a university, or working in the field in a company (article 3/4).

Article 11 provides that a lawyer must perform his duties in accordance with Sharia and regulations in force. He must avoid causing any harm to the other party or others. He may not – under article 12 – address any personal matters of his opponent or his lawyer and may not accuse others in a way that constitute a violation of “honor and dignity.”

Article 13 prohibits a lawyer from advertisement “in any medium of publicity.”

Legal Ethics and Business Ethics both address responsibilities of professionals. Business ethics, unlike legal ethics, is not codified or unified as in the ABA Model Rules of Professional Conduct.

A Code of Conduct may provide guiding principles for professions.

One of the principles that I think should be addressed regarding a code of conduct for any profession is observance of human rights.

I argue that any contract you enter into has an implied term of observance of human rights as the obligation of good faith.

This is the human rights clause in contracts.

For this Model Law we received comments by Professor Susan Fortney and Professor Leah Wortham. We held consultations in Norway. We proposed a proposal for a model law to be adopted by the Arab League in Casablanca, Morocco. We will have our next consultation on November 10<sup>th</sup> (Monday), which is Veterans Day and 11<sup>th</sup> (Tuesday) in Sweden.

And I consider the unification and harmonization of the law in the Arab world as one of three movements. I am not sure there is a connection among them:

- The Human Rights movement, starting in 2011
- The clinical legal education movement, starting in 2005
- The legal unification movement, starting in 1981

In 1981, what was called the Sana’a strategy called for the unification of the law.

In 1982 committees were formed.

In 1988 the first law on personal status was drafted.

Now we have 26 laws.

In 2012 we had one on corruption and another on human trafficking.

This June 18<sup>th</sup> and 19<sup>th</sup> I held a conference in Casablanca, Morocco and I proposed a law on legal aid and another on legal ethics, and the purpose of a model law on legal ethics is to serve

as a guide for parliamentarians in the region for drafting laws that regulate the legal profession. So perhaps it is a good idea to propose a parliamentarian handbook on legal ethics.

The other purpose of a model law on legal ethics is to serve as a foundation for a course on legal ethics.

In an effort to reform legal education in the Arab world I proposed a 10-step strategy for curriculum reform:

1. Incorporating human rights into core courses, especially the right of vulnerable groups;
2. Adopting comparative analysis of comparative legal systems;
3. Combining practical and theoretical training in every topic;
4. Educating on both substantive and procedural law;
5. Introducing recent legal development;
6. Assigning multiple sources of information in addition to textbooks;
7. Considering more than one language of instruction;
8. Seeking the participation of visiting and adjunct professors;
9. Linking schools of law with the other elements of civil society;
10. Emphasizing an active role for students in the educational process.

The objectives of the law are:

- Protection of the interest of the client, the public, the legal system;
- Promoting the rule of law;
- Increasing access to justice.

How can we achieve these two objectives: rule of law and access to justice?

How can we incorporate pro-bono services as means to enhance both objectives?

The ABA Model Rule 6.1 (b)(3) states that lawyers should participate in activities for “improving the law and the legal system or the legal profession.”

The ABA Preamble states “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legislation and a public citizen having a special responsibility for the quality of justice.”

The GCC Preamble does not make such a reference. Instead, article 1 provides for an introductory role: “lawyering is a free profession. It contributes to the achievement of the mission of justice and emphasizes the rule of law and guarantee of the right to defense of rights and freedoms.”

The law of Lebanon regarding the legal profession starts with “findings” or “reasons for the law.” Lawyering is a profession and a message, referring to “human values” and “rule of law.” This introduction section also refers to ten principles that a lawyer must abide by:

1. A lawyer does not commit an act that violates his “honor” or “dignity”;
2. A lawyer gives priority to the interest of his client;
3. A lawyer does not disclose his clients’ secrets;
4. A lawyer exercises his best efforts in his work, even for free;
5. A lawyer must be careful in managing his clients’ assets
6. A lawyer must keep his word;
7. A lawyer must courageously defend the interests of his client, regardless of the adverse consequences that may affect him;
8. A lawyer deals with the judiciary and his fellow lawyers with respect;
9. A lawyer preserves the honor and reputation of the profession;
10. A lawyer observes the rules of conduct of the profession and preserves it in letter and spirit.

So, to enhance access to justice, a law on the practice of law may include a provision on “legal aid”

For instance, the Advocate Law of Egypt no 17 of 1983 provides that “a lawyer must provide legal aid to citizens and others unable to bear the costs if such legal service...”

Provisions on pro-bono work are included in some of the recent legal aid laws that refer to clinics.

For instance, Kenya Legal Aid Bill of 2013 defines “legal aid providers” to include

- Advocates or law firms
- Advocates operating under the pro-bono program of the law society of Kenya
- Non-governmental organizations
- Faith-based organizations
- Universities and institutions running law clinics

In Algeria, a person is exempt from court fees if such person is a victim of human trafficking.

In Tunisia, the law no. 52 of 2002 provides for legal aid for a poor person who cannot afford paying for a lawyer.

In Qatar, the law no 23 of 2005 establishes the “Legal Aid Committee” chaired by judges who look into whether the client is incapable of paying attorney’s fees and there is a probability that the case would be successful.

In Israel, legal aid is available in both civil and criminal cases, and civil cases include domestic violence, human trafficking, labor rights, juvenile delinquency and alimony.

Article 39 of the GCC model law covers legal aid and provides that the Court that is deciding “the criminal case” may appoint a lawyer or more to defend the accused, and the lawyer may not refuse to do so except if he submits a justifiable excuse to the Court.

So what are the sources of a model law on legal ethics?

There are three:

- International rules and principles
- Comparative models
- Arab legislation

International sources include:

Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress in the Prevention of Crime and Treatment of Offenders (The Havana Principles of 1990)

Another source is the European Union Code of Conduct for European Lawyers of 2006.

Let me give you two examples:

2.5.1 In order to perform his or her functions with due independence and in a manner which is consistent with his or her duty to participate in the administration of justice, a lawyer may be prohibited from undertaking certain occupations.

The question is whether a lawyer can also be a law professor.

This is a problem in Iraq and that is why in the Iraqi model of clinics we have a lawyer. Another way is to allow graduate students who are lawyers to participate or establishing pro-bono associations of lawyers.

The other example from the EU Code of Conduct for European Lawyers of 2006 is “a fee charged by a lawyer shall be fully disclosed to the client, shall be fair and reasonable and shall comply with the laws and professional rules to which the lawyer is subject.”

This brings me to the second source: comparative national or domestic models

Here are some examples regarding the attorney’s fees:

- Israel, Bar Association Rules (Professional Ethics 2008) – An attorney will not accept fees for his professional work other than money

- India, Rules of Professional Conduct of 2013 – A lawyer or law firm shall not share legal fees with a non lawyer
- United Kingdom, Solicitors Regulation Authority Code of Conduct – Fee arrangement should clearly explain whether the client has insurance that fees may be paid by someone else such as a trade union.
- US American Bar Association Model Rules of Professional Conduct, 1983 – Rule 1.5 Fees – A lawyer shall not make an agreement for, charge, or collect an “unreasonable fee.” The factors to be considered in determining the “reasonableness of a fee” include:
  1. The time and labor required, the novelty of the questions involved and the skills required to perform the legal service properly;
  2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  3. The fee customarily charged in the location for similar legal services;
  4. The amount involved and the results obtained;
  5. The time limitations imposed by the client or by the circumstances;
  6. The nature and length of the professional relationships with the client;
  7. The experience, reputation and ability of the lawyer or lawyers performing the services and
  8. Whether the fee is fixed or contingent.

This brings me to the other question: how detailed a model law should be.

The American way of drafting is to provide for a long legal document.

The initial or preliminary question is whether we can have guiding principles that may apply to all legal systems.

Take advertisement: according to the Bahamas Bar (Code of Professional Conduct) regulations “the following categories of limited advertising are considered acceptable: listing in professional legal directories; telephone directories; professional journals or similar publications”

While in the Attorneys at Law Ethics Code of Bulgaria “An attorney at law may publicize information about his/her professional activities in any form of media,” such as by press, radio, television, electronic communications...

Then there is the prohibition under the Code of Ethics for Advocates of 2011 of Poland. Article 23 states: “An advocate is prohibited from using advertising and from seeking clients in a manner inconsistent with the dignity of the profession.”

A similar prohibition exists in Germany under the Federal Lawyers Act BRAD of 2011 and Arab Laws.

The first regulation regarding the legal profession was adopted in EGYOT in 1884 and the first law was drafted in 1912.

The law of Jordan of 1966 regarding the lawyering syndicate provides in article 54 “a lawyer must abide in his conduct with principles of honor[...] and transparency.”

Article 55 states: “A lawyer must defend his client with honesty and sincerity. A lawyer shall be liable if he exceeds the limits of his agency or in the event of gross fault.”

Article 56 states: “A lawyer must behave in court in a way consistent with the dignity of the profession. A lawyer must avoid any action or word that may obstruct justice.”

Article 57 states: “A lawyer must abide by, in dealing with his colleagues, rules of decency and the traditions of the profession.”

Article 58: “A lawyer must refrain from defaming his client’s adversary or mentioning private matters that may adversely impact him or his honor or dignity, except for the purpose of defending his client.

Article 6: “A lawyer may not try to seek clients through advertisement.”

In 2002, the Gulf Cooperation Council issued a model law regarding the practice of the law. The law contained 52 articles covering the conditions for practice and registration, rights and duties of lawyers, rules governing their discipline in addition to the general rules in practicing law.

Article 5 of the model law prohibits a lawyer from accepting any other public job except teaching at a sharia law or law college. A lawyer may not engage in any trade or “any act that may impact the honor and dignity of the lawyering profession.”

Article 25 provides that the lawyer may obtain a fee in accordance with the contract he signed with his client “compatible with the importance of the case and the effort exercised in it.”

Article 33 prohibits a lawyer from discussing a secret he is entrusted with or XXXX through his work unless “such disclosure may prevent the commission of a crime.”

Article 23 states that a lawyer may not disclose a secret he was entrusted to keep, even after the expiration of his power of attorney; unless to defend his principal or to respond to any inquiry by the authorities.”

Thank you.